

REMARKS

Claims 9-12 and 22-27 are pending in this application. Claims 23-27 stand rejected under 35 U.S.C. § 102 as being anticipated by Potter, and claims 9-12 and 22-27 stand rejected under 35 U.S.C. § 103 as being unpatentable over Van Schaftingen et al in view of Gerard.

Section 102 Rejections

Claims 23-27 were rejected under 35 U.S.C. § 102 as being anticipated by Potter. Potter discloses a fitting for a plastic container 10. The fitting includes hollow inner and outer components 40, 20 between which a portion of the wall of the plastic container itself is sandwiched. According to Potter, this permits a single barrier layer 51 of the container wall 48 to be continuous between the container and the fitting. In other words, the inner and outer components 40, 20 of the fitting in Potter do not include any vapor barrier layer themselves, and when the inner and outer components are joined together, they include only the vapor barrier layer 51 of the container, and not any separate vapor barrier layer. Rather, the fitting disclosed in Potter utilizes the plastic container's barrier layer and hence, there is only a single vapor barrier layer which is common to both the plastic container and the fitting. That barrier layer 51 of the fuel tank in Potter does not overlap itself or otherwise provide two barrier layers anywhere, let alone along the entire extent of the overlap of the fill nipple and shell as is recited in claim 23.

Independent claim 23, on the other hand, recites a fill nipple that includes a vapor barrier layer between inner and outer layers of the fill nipple. The vapor barrier layer of the separate fill nipple overlies the vapor barrier layer of the shell along the entire extent

of the overlap of the fill nipple and shell providing at least two vapor barrier layers along the entire extent of the overlap of the fill nipple and shell. As noted above, Potter merely discloses sandwiching a portion of a container between inner and outer fitting components 20, 40, so that the vapor barrier layer of the container itself is sandwiched between these components. In this regard, the vapor barrier layer 51 of the container in Potter does not overlap itself anywhere, let alone along the entire extent of the overlap of the fill nipple and shell. Accordingly, Potter cannot anticipate claim 23 which calls for a shell having a vapor barrier layer and a fill nipple having a vapor barrier layer that overlies the fuel tank barrier layer, providing two vapor barrier layers along the extent of the overlap of the fill nipple and shell. Indeed, Potter teaches directly away from such a construction and arrangement by requiring that the barrier layer of its fitting be the same, continuous vapor barrier layer from its container wall. See e.g. the abstract and paragraph 34, especially the last sentence thereof.

Further, the Examiner seems to contend, on page 8 of the Office Action, that flange portion 22 of the outer component 20 in Potter satisfies the claimed subject matter that “the vapor barrier layer overlies the shell vapor barrier layer along the entire extent of the overlap of the fill nipple and shell providing at least two vapor barrier layers along the entire extent of the overlap of the fill nipple and shell”. However, the flange portion 22 is not a vapor barrier layer as that term is defined in claim 23 (e.g. “of a polymeric material different than the polymeric material of the inner and outer layers of the fill nipple”). Flange portion 22 is only the outer layer of the fitting in Potter – flange portion 22 is not disposed between any inner and outer layers, or formed of a different polymeric material than inner and outer layers, so it is not itself a vapor barrier layer as that term is

used in claim 23. Further, flange portion 22 does not include or contain a vapor barrier layer. Rather, as noted above the fuel tank barrier layer 51 is itself merely trapped between inner and outer fitting components 20, 40 and the fuel tank vapor barrier layer 51 does not extend outwardly with the flange portion 22 so there is no overlapping of barrier layers. Nor are there at least two vapor barrier layers along the entire extent (or any portion at all) of the overlap of a fill nipple and shell, as recited in claim 23. Lastly on page 8, the Examiner suggests that there are “three barrier layers (51 of the tank, 51 of the nipple and the outer layers of flange 22)”. But simply identifying layer 51 twice (once for the tank and once for the fitting) does not somehow cause that layer 51 to overlap itself or define two separate layers. In fact, the only portion of any of the cited layers that overlaps another is flange 22, but flange 22 is not a vapor barrier layer as recited in claim 22 and demonstrated above. For at least these reasons, Potter cannot anticipate claim 23 -- Potter actually teaches away from the construction and arrangement recited in claim 23. Claim 23 defines patentable subject matter over all cited art.

#### **Dependent Claims 24 and 25**

Each of dependent claims 24 and 25 is dependent upon claim 23 and therefore is patentable for at least those reasons that claim 23 is patentable. Further, the Examiner has again provided no factual support for the rejection of claim 24 as set forth in paragraph 5 of the instant Office Action. Rather, the Examiner merely recites figures 1-3 of Potter, none of which support the stated rejection. Indeed, the Examiner has not identified any structure or portion of these figures which allegedly would anticipate the construction and arrangement recited in claim 24. With respect to claim 25, applicant

again respectfully disagrees with the Examiner's assertion in paragraph 6 of the instant Office Action. The top flange in figure 6 of Potter does not extend radially inwardly but rather, extends in the same radially outward direction as the other flanges of the multiple piece fitting. If the Examiner disagrees, Applicants again respectfully request that the Examiner provide a marked-up copy of figure 6 of Potter clearly showing how the Examiner is construing this figure. Regardless, Potter cannot anticipate claim 25.

#### Claims 26 and 27

Independent claim 26 was previously amended to recite that the shell includes a vapor barrier layer and the fill nipple includes a vapor barrier layer that is separate and spaced from the vapor barrier layer of the shell. The Examiner has simply repeated exactly the rejection stated prior to the above amendment, and has not addressed the above noted amendment at all. Accordingly, Applicants request that claim 26, as previously amended, be reviewed and if the Examiner maintains the rejection, then Applicants are entitled to know how the Examiner believes that Potter includes a fill nipple with a vapor barrier layer that is separate and spaced from the vapor barrier layer of a shell as is recited in claim 26. In this regard, Applicants again note that none of the cited references teach, disclose or even suggest the construction or arrangement recited in claim 26. Indeed, Potter teaches directly away from such a construction or arrangement by teaching that a single vapor barrier layer of a fuel container continuously extend to a fitting such that the plastic container and fitting share a common vapor barrier layer. For at least these reasons, claim 26, as amended, defines patentable subject matter over the cited art.

The Examiner responded to Applicants' prior response with regard only to claim 23. Applicants' remarks in favor of patentability of all other claims, including claim 27, were not discussed in the instant Office Action. Independent claim 27 is patentable over all cited art for at least the reason that it discloses a separate fill nipple having a vapor barrier layer that overlies the fuel tank vapor barrier layer along the entire extent of the overlap of the fill nipple and shell providing two vapor barrier layers along the entire extent of the overlap of the fill nipple and shell. Neither cited reference teaches, discloses or even suggests such a construction and arrangement. For at least these reasons, independent claim 27, defines patentable subject matter over all cited art.

### **Section 103 Rejections**

Claims 9-12 and 22-27 were rejected under 35 U.S.C. § 103 over Van Schaftingen et al in view of Gerard.

### **Claim 9**

While it is contended in the Office Action that Van Schaftingen discloses a "separate fill nipple (10 in fig. 3) having an outer surface and an inner surface (the materials are defined in col 6 line 43 the PEHP, EVOH, PEHP material)", Van Schaftingen does not disclose or even suggest such a construction and arrangement. Instead, Van Schaftingen teaches only that the pipette 10 is made "of a material of low permeability" while the fuel tank has a multi-layer construction (as noted in column 6, lines 43-44). Nothing in Van Schaftingen's written description or drawings supports the Examiner's conclusion that the pipette 10 has a multi-layer construction. Indeed, the

drawings in Van Schaftingen clearly show other components as having a multi-layer construction, but specifically show the pipette 10 as a single layer component of uniform material that is joined to the plate 1, which is consistent with the written description. Accordingly, the Office Action is incorrect where it states that the pipette 10 in Van Schaftingen has an inner layer, an outer layer and a vapor barrier layer of a material different than the material of the inner and outer layers. The Office Action likewise is incorrect where it states that the pipette 10 in Van Schaftingen includes adhesive layers. And no other component in Van Schaftingen can meet the elements recited in claim 9. Gerard does not fill-in at least these deficiencies in Van Schaftingen, so no combination of these references can be made which meets all the elements set forth in claim 9. For at least these reasons, claim 9 is patentable over Van Schaftingen and Gerard.

**Dependent Claims 10-12 and 22**

Each of claims 10-12 and 22 is dependent upon claim 9 and defines patentable subject matter for at least those reasons that claim 9 is patentable, and for the additional points of novelty recited in these dependent claims. With regard to claim 11, the stated rejection is unclear – what is the Examiner contending is the fill nipple in Gerard's Figure 1? The only reference number used was #9, for the cover. What is the Examiner contending is the radially outwardly extending flange connected to the tank (at an inner surface) and to which the cover also is attached? In any event, Applicants note that the cover 9 in Gerard is attached to the fuel tank 4, and not to any fill nipple or other related component. For at least these reasons, claim 11 is patentable over the cited art.

With regard to claim 22, Applicants' disagree that the claimed arrangement is "clearly shown in fig. 3" as contended by the Examiner. The elements of claim 22 are not shown at all in Fig. 3 of Van Schaftingen, nor does the disclosure in Van Schaftingen support the recited rejection. Claim 22 recites, among other things, that "the inner layer of the fill nipple is attached to the outer layer of the shell and the cover is attached to the outer layer of the fill nipple and the outer layer of the shell." Van Schaftingen instead teaches that the pipette 10 includes a flange that is attached to the plate 1 (see column 7 at lines 12-15) before the plate is attached to the tank 4 (see column 7 at lines 29-32). Accordingly, the stated rejection is unsupported because there is no support that the pipette 10 is connected to the tank in Van Schaftingen at all, let alone with an "inner layer" of the pipette 10 connected to an outer layer of the tank 4. Further, the rejection states that the remainder of claim 22 is met by Van Schaftingen, namely that "the cover is attached to the outer layer of the fill nipple and the outer layer of the shell" and it is untenable to suggest that the cover is attached to the "outer layer" of the pipette 10 while also contending that the "inner layer" of the pipette 10 is connected to the fuel tank 4. The same layer of the pipette 10 that is connected to the plate 1 is adjacent to the tank 4 and so, even if for the sake of argument it was considered that the pipette 10 was connected to the tank 4, which it isn't, that layer of the pipette 10 adjacent to the tank 4 cannot be considered an inner layer on the one hand and also an outer layer on the other hand.

If the Examiner disagrees, Applicants respectfully request that the Examiner provide a marked-up copy of figure 3 of Van Schaftingen clearly showing how the Examiner is construing this figure. Regardless, claim 22 is patentable over the cited art.

**Claims 23-27**

The Office Action does not apply Van Schaftingen or Gerard at all with regard to any of claims 23-27, nor are these claims mentioned at all with regard to any rejection under 35 U.S.C. 103.

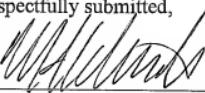
**CONCLUSION**

Claims 9-12 and 22-27 define patentable subject matter over all cited art. Accordingly, reconsideration and allowance of all of these claims are respectfully requested.

If, after considering this Response, the Examiner believes any of the claims are not in condition for allowance, it is respectfully requested that the Examiner initiate a telephone interview with Applicant's undersigned attorney, Matthew J. Schmidt, whose telephone number is (248) 689-3500, so immediate consideration can be given to any further amendment suggested by the Examiner or needed to place all of the claims in condition for allowance.

The request for a one-month extension of time (\$120.00) is being paid by credit card. Applicant believes that no other fees are due at this time. Any other fee(s) deemed necessary for this response may be charged to deposit account no. 50-0852.

Respectfully submitted,

  
Matthew J. Schmidt, Reg. No. 43904  
Reising, Ethington, Barnes, Kisselle P.C.  
P.O. Box 4390  
Troy, Michigan 48099-4390  
248-689-3500

September 29, 2008